Over Yonder: A National Perspective to Sick and Safe Leave

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I. **Sick and Safe Leave Laws**

a. **Jurisdictions.** By early 2019, more than 30 state and local governments currently or will soon require some or all private employers to provide sick and safe leave to employees. These jurisdictions include:

   i. **States.** California, Connecticut, Washington, New Jersey, Massachusetts, Maryland, Oregon, Arizona, Vermont, Rhode Island, and Michigan.

   ii. **Local Governments (city and county).** Washington, D.C., San Francisco, CA, Emeryville, CA, Los Angeles, CA, San Diego, CA, Berkeley, CA, Santa Monica, CA, Long Beach, CA, Oakland, CA, Seattle, WA, Tacoma, WA, New York City, NY, Westchester County, NY, Philadelphia, PA, Montgomery County, MD, Minneapolis, MN, St. Paul, MN, Duluth, MN, Cook County, IL, Chicago, IL, Austin, TX, San Antonio, TX.

   iii. **Federal Contractors.** Executive Order 13706 requires certain federal contractors to provide paid sick leave to employees.

b. **Common Features.**

   i. **Sick Leave.** Time off for employees to care for themselves, family members, or a designated person not related by blood or marriage. Includes medical treatment and recovery time for illness and injury and preventative care.

   ii. **Safe Leave.** Time off for employees to deal with the effects of domestic violence, stalking, or sexual assault. This includes, among other things, court attendance, relocation, or obtaining restraining orders.

   iii. **School and Childcare Closures.** Time off when an employee’s child’s school or childcare center closes. May be limited to certain reasons for closure, or include the ability to take time off to attend school-related conferences.

   iv. **Business closure.** Time off if the business is closed for certain reasons, including a public health emergency.

   v. **Accrual or Frontloading.** Employers typically may choose between providing sick leave on an accrual- or up-front basis. Alternatively, employers in some jurisdictions may provide PTO on the same or more generous terms.
vi. **Limitations.** These vary from capping the hours of use on an annual basis, limiting accrual or carry over, or permitting employers to impose waiting periods before new hires may use protected leave.

vii. **Notification.** Employers must notify employees of their rights under the state, and employees, in turn, must provide certain notification before using sick and safe leave. The procedures vary by location.

viii. **Balance Access.** Employees must receive regular access to their sick and safe leave balance, either on the wage statement, a writing accompanying the wage statement, or upon request. Electronic access may be sufficient.

ix. **Recordkeeping.** Employers must keep records related to sick and safe leave, which vary by jurisdiction. Although some requirements are quite detailed, most require employers to track the amount of sick leave accrued, used, and paid out for a period ranging from one- to- five years.

x. **Payment.** The rate of pay for paid sick and safe leave is generally the amount the employee would have received if s/he had reported to work. However, some laws require employers to consider forms of pay such as commission and shift differentials, which may require more complex calculations.

xi. **Transfer and Rehire.** An employee who transfers out of the sick leave jurisdiction or separates from employment may be entitled to reinstatement of his or her sick leave balance in the future if the employee is rehired or transfers back to the sick leave jurisdiction. Generally, employers are not required to pay out sick leave when an employee terminates or transfers, but a transferring employee may be entitled to use previously accrued, unused sick leave in the new location.

II. **Sources of Authority**

a. **Challenges for Compliance.** Sick leave laws are relatively new, generally passed within the last five- to- ten years. An employer’s obligations may derive from city ordinances, and it can be challenging to identify developments in enforcement guidance.

b. **State Law.** State sick and safe leave laws come with the benefit of easy to identify statutes, codified regulations, court decisions, and state agency guidance.

c. **Local Law.** County and city sick and safe leave ordinances may be accompanied by formal regulations. Oftentimes informal guidance in the form of FAQs published online provide the only form of guidance for
employers. These FAQs and even regulations may be revised without any notice to employers.

d. **Conflicting law.** Some states with sick and safe leave laws include cities or counties with their own competing ordinances. Employers should carefully review all applicable requirements and where they conflict, and adopt the most employee-friendly provision.

III. **Potential Liability**

a. **Administrative Penalties.** Nearly all sick and safe leave laws provide the enforcement agency (such as a state or local labor or civil rights department) to assess administrative fines for violations of the law, including failure to provide required time off or proper payment for time off. This may also include fines associated with improper recordkeeping, notification, or retaliation against employees to request time off or report violations.

b. **Civil Penalties.** Some sick and safe leave laws provide employees with the right to bring a private civil action to recover damages from failure to provide protected time off, and may include fee-shifting provisions for recovery of attorneys’ fees and costs, as well as liquidated damages.

c. **Payment of Wages.** In some cases, an employee seeking payment for protected leave under the statute may bring a related cause of action under the applicable state wage-payment law.

d. **Class liability.** In some cases, employees may seek class treatment of claims related to the violation of a sick and safe leave law. Potential claims may involve miscalculation of payment for sick leave, non-compliant attendance policies, or failure to keep proper records or provide notice to employees of their rights.

IV. **Considerations For Implementing Sick Leave Policy**

a. **Overly generous or administratively easy?** A universal policy is easier to administer, but may be impracticable from a business perspective.

b. **Sick Leave Policy or PTO Program?** Consider the nature of the workforce, work site locations, reinstatement rights, and rates of pay.

c. **Flexible/Unlimited PTO?** An attractive option for certain categories of employees.

d. **HRIS Platform?** Does the HRIS vendor provide support for calculating rate of pay, providing access to balance information, or reporting time off?